

Police Policy in Implementing the Concept of Restorative Justice in Handling Minor Crimes

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Abstract. *The purpose of this research is to knowing and analyzing the existence of the Police in applying the concept of restorative justice to minor crimes. In this paper, the author uses a normative juridical method with a descriptive analysis research specification. When dealing with minor crimes, the application of repressive criminal sanctions often results in ongoing negative impacts, such as social stigma, waste of state resources, and injustice for perpetrators who should have the opportunity to change. The implications for correctional institutions if minor crimes are processed to the point of sentencing, which increases the capacity of correctional institutions which are currently plagued by quite serious problems in rehabilitating inmates who have exceeded the capacity of correctional institutions throughout Indonesia. In order to answer the development of legal needs of the community that fulfills the sense of justice for all parties, the Indonesian National Police (Polri) as the first door to the criminalization process for minor crimes can stop the process by being authorized by Law Number 2 of 2002 concerning the Indonesian National Police to formulate a new concept in criminal law enforcement.*

Keywords: *Exceeded; Juridical; Normative; Processed.*

1. Introduction

Indonesia's constitutional policy following the amendment to the 1945 Constitution of the Republic of Indonesia (UUD NRI) solidified Indonesia as a state based on law. Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that "Indonesia is a State based on law." This formulation solidifies the principle of the rule of law adopted in the 1945 Constitution of the Republic of Indonesia before the amendment.¹As a state based on law, all aspects of social, national and state life, including government, must be based on laws that are in accordance with the national legal system.

¹Widayati, (2020). Implementation of Legal Principles in the Formation of Participatory and Just Legislation, Unissula Law Journal, 36 (2) September. p. 60

The law is perceived as not reflecting society's sense of justice. It has become blunt, unable to cut through arbitrariness, unable to uphold justice, and unable to present itself as a guideline to be followed in resolving cases that should be addressed by the law.²Therefore, efforts are needed to return the law to its true ideal purpose: to create justice, legal certainty, and prosperity for the people, regardless of their status.³

Law has long been understood as a set of rigid rules that place too much emphasis on the legal system, ignoring the connection between legal science and the issues it addresses. Rigid or inflexible law will create complexity and various conflicts in social life, necessitating a legal concept that is socially acceptable and adaptable.⁴

It is still fresh in the public's memory when Grandma Minah, a resident of Sidoharjo, Darmakradenan Village, Ajibarang District, Banyumas Regency, had to undergo legal proceedings because she picked three cocoa pods belonging to PT Rumpun Sari antan 4. The cocoa worth Rp.2000; (two thousand Rupiah) was supposed to be used by Grandma Minah for her garden seeds. Apparently the act of picking (not yet bringing) the cocoa had to end up in court after the Ajibarang Police processed the case to the prosecutor's office. Minah, who is illiterate, was charged with Article 362 of the Criminal Code, and Law Number 18 of 2004 concerning Plantations, Article 21 and Article 47.⁵

Although the Court did not ultimately sentence Grandma Minah to prison, the case became a major spotlight for the Indonesian people by creating a paradigm of the condition of the Indonesian criminal system which still has major problems with the processing of criminalizations on a minor crime which in terms of effectiveness is not effective from any aspect, both the state budget aspect to process the criminal procedure system, the effectiveness of time for law enforcers who can be more focused on more crucial cases, as well as the level of logic and legal reasoning for law enforcers because they still process minor crimes which in terms of urgency only add to the burden of the state in managing the perpetrators up to the stage of the Correctional Institution. The implications for the Correctional Institution if minor crimes are processed to the verdict which increases the capacity of the Correctional Institution which is currently already plagued by quite heavy problems in fostering prisoners who have exceeded the capacity of Correctional Institutions throughout Indonesia or in terms of over capacity.

²Moh. Mahfud MD, (2009). *Legal Politics in Indonesia*, Rajawali Press, Rajagrafindo Persada, Jakarta. p. 9

³Widayati, (2020). *Op.Cit*, 36 (2) September. p 60

⁴Wahidur Roychan, (2021). *The Construction of Nebis in Idem Against the Protection of Industrial Design Rights*, *Jurnal Sosio Yustisia*, 1 (2)

⁵Sri Mulyani, (2016). *Settlement of Minor Criminal Cases According to Law from a Restorative Justice Perspective*, *Journal of Legal Research: De Jure*, 16 (3) September. p. 337

In order to respond to the development of legal needs of the community that fulfills the sense of justice for all parties, the Indonesian National Police (Polri) as the first door of the criminalization process of minor crimes can stop the process by being authorized by Law Number 2 of 2002 concerning the Indonesian National Police to formulate a new concept in criminal law enforcement that accommodates norms and values that apply in society as a solution while providing legal certainty, especially the benefits and sense of justice of the community. Seeing all of this, the Indonesian National Police (Polri) needs to realize the resolution of criminal acts by prioritizing restorative justice that emphasizes restoration to the original state and balance of protection and interests of victims and perpetrators of criminal acts that are not oriented towards punishment.

Based on this, the author is interested in researching and writing about it in legal writing. The aim of this research is to determine and analyze the existence of the police in applying the concept of restorative justice to minor crimes.

2. Research Methods

To conduct the study in this research, the author used a normative legal method. Considering that the problems being researched and examined adhere to the legal aspect, namely based on norms, regulations, legislation, legal theories, and the opinions of legal experts. In normative legal research, law is conceptualized as a rule or norm that is the basis for human behavior that is considered appropriate. This research is categorized as normative research because it examines library materials against secondary data sourced from library materials.

3. Results and Discussion

1) Terminology Restorative Justice

Miriam Liebman defines Restorative Justice as "Restorative justice has become the term generally used for an approach to criminal justice (and other justice systems such as a school disciplinary system) that emphasizes restoring the victim and community rather than punishing the offender."⁶

The concept of restorative justice emphasizes peace-based justice, which does not recognize justice based on revenge or punishment for the perpetrator in resolving a case. The application of this concept represents a development in the criminal justice system that emphasizes the involvement of both the perpetrator and the victim in resolving a case, a mechanism not currently recognized in conventional criminal procedure law.

⁶Miriam Liebman, (2007). Restorative justice: How It Works, Jessica Kingsley Publishers, London, p 27.

2) Minor Crimes

A definition of a minor crime is very difficult to find in the Criminal Code. A fairly understandable definition of a minor crime can be found in the Criminal Procedure Code as a formal criminal law provision of the Criminal Code. Article 205 paragraph (1) of the Criminal Procedure Code, which regulates the provisions for fast-track examinations, states that:

"Those examined according to the examination procedure for Minor Crimes are cases which are threatened with imprisonment or detention of a maximum of three months and/or a fine of up to seven thousand five hundred rupiah and minor insults except those specified in Paragraph 2 of this Section."

From the text of the Article, it can be concluded that the definition of a Minor Crime is a case that is threatened with a maximum prison sentence of three months and/or a maximum fine of seven thousand five hundred rupiah. Even though minor cases of insult are threatened with a heavier sentence than three months, namely a sentence of four months, they are considered to be included in the category of Minor Crimes, this is because their nature is considered quite light.

What is interesting about Misdemeanors is that they include minor insults, which are listed in Book II of the Criminal Code on crimes. In doctrine, minor insults are one of a group of crimes called minor crimes (*lichte misdrijven*) found in Book II of the Criminal Code.

3) The Existence of the Police in the Implementation of the Concept of Restorative Justice for Minor Crimes

The desire of law enforcement officers, especially investigators in the police, to resolve minor criminal cases that cause minor losses, including stopping criminal cases that are not complaint offenses but have been withdrawn by the parties to the case (the complainant), of course this cannot be separated from the agreement of the victim and the perpetrator of the crime with a spirit of togetherness and support from the wider community. The policy of not rushing to bring minor cases (minor criminal cases) with minor losses to the investigation path by law enforcement officers, especially in the Police, is certainly in line with the model of police activities "community policing" which in the context of the Police is developed with two minimal elements, namely partnership and problem solving. This is reflected in the Decree of the Chief of Police No. Pol: Skep / 737 / X / 2005 dated October 13, 2005 concerning the Policy and Strategy for Implementing the Community Policing Model in the Implementation of Police Duties. This policy aims to encourage community initiative and capacity, assisted by local police, to resolve local and minor issues. The authority and responsibility delegated to Community Police officers and the Community Police Partnership

Forum (FKPM) must be autonomous and independent in taking steps to resolve issues and resolve minor crimes/conflicts between residents, as well as between residents and the police and local officials.⁷

In order to address the evolving legal needs of the community that meet the sense of justice for all parties, the Indonesian National Police (Polri) is authorized by Law No. 2 of 2002 concerning the Indonesian National Police to formulate a new concept in criminal law enforcement that accommodates prevailing norms and values in society as a solution while providing legal certainty, especially for the benefit and sense of justice of the community. Seeing all of this, the Indonesian National Police needs to realize the resolution of criminal acts by prioritizing restorative justice that emphasizes restoration to the original state and balance the protection and interests of victims and perpetrators of criminal acts that are not oriented towards punishment.

In terms of internal legal legitimacy, the beginning of handling criminal cases with restorative justice was when the Chief of Police, General Tito Karnavian, issued a Circular Letter (SE) regarding restorative justice, namely in letter number SE/8/VII/2018 signed on July 27, 2018, which was then followed by Article 12 letters a and b of Regulation Number 6 of 2019 concerning Criminal Investigation. Then, with all aspects of consideration of the urgency of the condition of Indonesian criminal law and society regarding the polemic and dynamics of the criminalization of minor crimes, the Republic of Indonesia National Police Regulation (Perpol) Number 08 of 2021 was issued regulating the handling of criminal cases based on restorative justice. This regulation will later become the basic guideline in resolving cases with the technical criminal investigation process which will be useful in terms of providing legal certainty, as regulated regarding the termination of investigation (SPP-Lidik) and termination of investigation (SP3) for legal reasons based on restorative justice.

The enactment of Police Regulation No. 8 of 2021 concerning Restorative Justice provides space for police officers in the Criminal Investigation Unit to resolve cases more quickly and provides normative guidelines for resolving minor criminal cases using restorative justice methods.⁸ Regarding case handling, as stipulated in Police Regulation No. 8 of 2021, restorative justice is attempted when a complaint regarding a criminal act is filed. However, in practice, restorative justice is implemented at all initial stages of criminal proceedings, from the preliminary investigation to the prosecution.

⁷Yoyok Uruk Suyono, (2020). Settling Minor Crimes Outside the Courts as an Effort to Achieve a Sense of Justice. *Jatiswara*, 35 (3) November. p. 328

⁸Didik Hariyanto, (2023). The Application Of Restorative Justice In Criminal Case Settlement At The Investigation Level At The Police Satrescription Of The Banyuwangi City Police Resort. *Janaloka*, 02 (01). p 123

Regarding its authority, it is based on the Regulation of the Republic of Indonesia National Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, which stipulates that handling of criminal acts based on Restorative Justice is carried out in the following activities:

- a. implementation of the Criminal Research function;
- b. investigation; or
- c. investigation.⁹

The Criminal Investigation function is carried out by the Community Development and Samapta (National Police) officers, in accordance with their respective duties and authorities. Investigations are conducted by National Police Investigators. Meanwhile, in the handling of criminal offenses, minor offenses can be resolved, which can result in the termination of the investigation.¹⁰

The general requirements for handling criminal acts based on restorative justice are regulated in National Police Regulation Number 8 of 2021, which qualifies the material and formal requirements, including:

1) Material requirements include:

- a. Does not cause unrest and/or rejection from the community;
- b. Does not impact social conflict;
- c. Does not have the potential to divide the nation;
- d. Not radical or separatist;
- e. Not a repeat offender based on a court decision; and
- f. Not a crime of terrorism, a crime against state security, a crime of corruption, or a crime against people's lives.¹¹

2) Formal requirements include:

- a. Peace from both parties except for drug crimes which is proven by a peace agreement letter and signed by the parties;

⁹Article 2 Paragraph (1) of the Republic of Indonesia National Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice

¹⁰Article 2 Paragraphs (2), (3), (4) and (5) of the Republic of Indonesia National Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice

¹¹Article 5 of the Republic of Indonesia National Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice

b. Fulfillment of the rights of victims and the responsibilities of perpetrators, except for drug crimes, can be in the form of:

- 1) Returning goods;
- 2) Compensate for losses;
- 3) Reimburse costs incurred as a result of criminal acts; and
- 4) Compensate for damages caused by criminal acts.

The provisions with special qualification requirements that accommodate several specific crimes to be handled with the implementation of the restorative justice concept, including information and electronic transaction crimes, narcotics, and traffic crimes, are regulated in Police Regulation Number 8 of 2021, as follows:

1) Information and electronic transaction crimes

- a. Perpetrators of information and electronic transaction crimes who spread illegal content;
- b. The perpetrator is willing to delete the content that has been uploaded;
- c. The perpetrator conveyed an apology via a video uploaded on social media accompanied by a request to delete the content that had been spread; and
- d. The perpetrator is willing to cooperate with the National Police investigators to conduct further investigations.¹²

2) Drug crimes:

- a. Drug addicts and victims of drug abuse who apply for rehabilitation;
- b. When caught red-handed, evidence of narcotics for 1 (one) day's use was found, categorized as narcotics and psychotropics in accordance with the provisions of laws and regulations; and no evidence of narcotics crimes was found, however, the urine test results showed positive for narcotics;
- c. Not involved in drug crime networks, distributors and/or dealers;
- d. An assessment has been carried out by an integrated assessment team; and
- e. The perpetrator is willing to cooperate with the National Police investigators to conduct further investigations.¹³

¹²Article 8 Paragraph (1) of the Republic of Indonesia National Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice

¹³Article 9 Paragraph (1) of the Republic of Indonesia National Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice

3) Traffic crimes:

- a. Traffic accidents caused by driving a motor vehicle in a dangerous manner and under dangerous conditions resulting in material losses and/or minor injuries; or
- b. Traffic accidents on the road due to negligence resulting in human casualties and/or property losses.¹⁴

Implementation in accordance with these regulations or the legal basis stated for restorative justice is required by the Republic of Indonesia National Police Regulation Number 8 of 2021 concerning the handling of criminal acts based on restorative justice. The police use a restorative justice approach to achieve restorative justice and achieve social justice. By examining the police's authority in implementing restorative justice, we at least know that their authority does not limit the enforcement of restorative justice to the maximum criminal penalty level. Restorative justice can be practiced by every Indonesian citizen. Every member of the Indonesian National Police has the ability to implement restorative justice in their criminal investigation and police investigation functions.

The implementation of restorative justice for repeat offenders requires special consideration. The specific requirements are outlined in Police Regulation No. 8 of 2021.¹⁵, where the regulation explains that not a repeat offender of a crime based on a court decision, so the recording of the crime must await the court's decision. Not a repeat offender of a crime based on a court decision refers to someone who is not considered a recidivist (a person who commits crimes repeatedly) by the court.¹⁶In other words, the person has not been proven to have committed a crime repeatedly or has been previously convicted, and the court decision states that the person is not a repeat offender.

Implicitly, the application of restorative justice in minor criminal cases, with the essence of law enforcement, means that the police's position as law enforcers is merely as a catalyst, and only if necessary. In this case, the police's existence is not part of the conflict faced by the perpetrator and victim, by representing the victim and the community, but only facilitates, accelerates, and resolves the problem, without taking part in the problem itself. Law enforcement is not a stand-alone activity, but rather has a close reciprocal relationship with the community. Therefore, in interpreting law enforcement, the societal structure behind it should not be ignored. Law enforcement in a society has its own tendencies caused by its

¹⁴Article 10 of the Republic of Indonesia National Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice

¹⁵Article 5 Letter e of the Republic of Indonesia National Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice

¹⁶Fernando Manurung, (2024). Implementation of Material Requirements for Restorative Justice for Repeat Offenders Based on Court Decisions in the Siak Police Jurisdiction, "The Juris" Journal of Legal Studies, VIII (1) June. p. 254

societal structure. This societal structure is an obstacle, both in providing social facilities that enable law enforcement to be carried out, as well as providing obstacles that prevent law enforcement from being carried out or at least not being able to run as expected.¹⁷ This means that the implementation of the concept of restorative justice by the police in minor criminal cases also requires a sociological law enforcement mechanism in which the influence of the community paradigm on criminalization also influences the smooth implementation of the concept.

In general, the legal challenges facing the police in applying the concept of restorative justice to minor criminal cases are predominantly focused on legal certainty. In reality, the police have pursued internal legal policies as a form of reorientation of a new paradigm in addressing criminal punishment in the context of minor criminal offenses with a restorative paradigm. However, state policy, in this case, is needed, legislative instruments to harmonize formal criminal law sources in the form of the Criminal Procedure Code (KUHP) as a legal hierarchy that is higher than merely internal regulations of the institution to meet the needs of the restorative justice concept and also as a strong legal guideline and legal certainty for the police in optimizing the concept of restorative justice in handling minor criminal cases.

The absence of a reason for terminating an investigation due to restorative justice in the Criminal Procedure Code (KUHP) has created a polemic for investigators in terminating an investigation into a minor crime because even though there is internal legal legitimacy stating that restorative justice can be attempted, the formal source of criminal law, namely the KUHP, does not clearly strengthen this effort in its legal substance. As a result, the work culture of investigators who mostly carry out their duties with a legislative paradigm and a positivistic paradigm creates doubts among investigators when carrying out their duties, especially in terminating an investigation based on restorative justice.¹⁸

4. Conclusion

Taking into account the urgent situation of Indonesian criminal justice and the public's concerns regarding the controversy and dynamics surrounding the criminalization of minor crimes, the Republic of Indonesia National Police Regulation (Perpol) Number 08 of 2021 regulates the handling of criminal cases based on restorative justice. This regulation will serve as a basic guideline for resolving cases through the technical investigation process, which will be useful in providing legal certainty, as stipulated in the termination of investigations (SPP-

¹⁷Satjipto Rahardjo, (2009). *Law Enforcement: A Sociological Review*, Yogyakarta: Genta Publishing, p. 31

¹⁸Zulhamsyah Putra, (2024). Opportunities and Challenges of Implementing a Restorative Justice System in the Indonesian National Police Institution. *Journal of Legal Studies*, 1 (4) July. p. 316

Lidik) and termination of investigations (SP3) for legal reasons based on restorative justice.

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